Chinook WIRELESS

February 22, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-45
WC Docket No. 05-337
WC Docket No. 08-10

Dear Ms. Dortch:

MTPCS, LLC d/b/a Chinook Wireless ("Chinook Wireless"), a wireless carrier licensed to serve Montana, Wyoming, and North and South Dakota, provides wireless voice and data services to its customers using a state-of-the-art GSM/EDGE technology platform. Chinook Wireless submits this letter to discuss the proposed interim caps on high cost universal service funding to competitive eligible telecommunications carriers ("CETCs") and their consumers, to suggest provisions that would make any such caps more equitable, and to discuss the "carve out" from such caps for General Communication, Inc. ("GCI"), a predominantly wireline carrier in Alaska.

I. The Proposed Caps Will Not Achieve Equitable Reform Nor Remedy The Significant Waste in the USF System. Long-Term Reforms to Eliminate Duplicative Spending Would Achieve More Substantial, More Lasting Benefits.

The Telecommunications Act of 1996 ordered the FCC to break down barriers to competition by directing the FCC to develop universal service rules that work with competition, not impede it. Where competition exists, it has dramatically driven down service prices and increased quality of service.[1] The view that universal service and competition are mutually

[1] As an example of consumer benefits from competition: consider the wireless industry, which became highly competitive after the introduction of spectrum auctions in 1996. From 1995 - 2005, the average cost per minute for wireless service dropped from 43 cents/minute to 7 cents/minute. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993–Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report*, 21 FCC Rcd 10947 (2006), App. A, Table 10. Factoring in the 11.7% contribution factor from second quarter 2007, the cost of a wireless call for 1995 is calculated at 7.8 cents/minute, as compared to the 43 cents of 10 years earlier. In other words, even including customers' contributions to the universal service fund, competitive forces have driven down the total amounts they pay for wireless service, even as those customers make more and longer calls, increasing 119 to 740 average wireless minutes per month over the same 10-year period. *Id.*

exclusive has been consistently rejected by the FCC[2] and was succinctly characterized by the 5th Circuit Court in *Alenco v. FCC*:

> Petitioners' various challenges fail because they fundamentally misunderstand a primary purpose of the Communications Act--to herald and realize a new era of competition in the market for local telephone service while continuing to pursue the goal of universal service. They therefore confuse the requirement of sufficient support for universal service within a market in which telephone service providers compete for customers, which federal law mandates, with a guarantee of economic success for all providers, a guarantee that conflicts with competition.[3]

The drafters of the Act intended to provide competitors with support from the universal service high-cost fund, just as landline incumbents in each area had received such support for years. Growth in the Fund[4] was viewed as necessary in order to bring new technologies into rural America. What legislators did not anticipate[5] was that after competitors entered rural markets, funding would not be reduced for incumbent carriers who lost customers or used funds inefficiently. Joint Board Member Billy Jack Gregg, in testimony before the Senate Commerce Committee, described legislative intent and expectations in 1996 as follows:[6]

> It should not be surprising that funding for competitive ETCs has increased. After all, before the advent of competition incumbents received 100% of high cost funding. It was expected that as competitors gained ETC status and won customers in high cost areas, their high cost funding would rise. What is surprising is that incumbent support has not dropped by an amount proportionate to the increase in competitive ETC funding. . . .

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2 The Commission has stated, e.g., "By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advances services are met by means that enhance, rather than distort competition." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325, released Aug. 8, 1996 at ¶7 ("*Local Competition Order*")

3 201 F.3d 608, 625 (5th Cir. 2000). *Alenco* was an unsuccessful lawsuit brought by rural ILECs against the FCC seeking to interpret the 1996 Act so as to insulate wireline carriers from competition.

4 Concerns about Fund size could not logically relate to contribution factors, which are once again declining. If concern over Fund size relates to carrier receipts, consider the fact that wireline carriers still receive the predominant share of universal service funding. In the state of Montana, in 2006, according to the Joint Board, incumbent wireline carriers received $69.7 million in funding, and competitive carriers such as wireless received $7.2 million in funding. *See* Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 7.2 (2006). Incumbent wireline carriers still receive more than three times as much funding as their wireless and wireline competitors, and in some states, they receive 100% of universal service funding.

5 Testimony of Billy Jack Gregg before Senate Commerce, Science and Transportation Committee, at 6-7 (March 1, 2007), *referencing* House Report No. 104-204 (I) (1995), Arnold & Porter Legislative History P.L. 104-104 (*A&P*) at 60; Senate Report No. 104-23, *A&P* at 254 (1995).

6 *Id.*

> Not only was the introduction of competition expected to lower prices of telecommunications services, it was supposed to lower the cost of universal service as providers competed for the universal service subsidy.

We understand that regulatory decisions in these matters cannot be universally popular with all industry participants, regardless of the choices made – but consumers, not carriers, are the intended beneficiaries of universal service.

Mobile phones are of increasingly critical importance to consumers: to the public safety community and the citizens whose lives depend on rapid response, particularly in rural areas where no landline phone is readily available, such as long highways, fields, farms, ranches, mountains and ski areas such as those we serve in Montana, and elsewhere. In fact, wireless carriers and local governments' public safety answering points have invested millions in state of the art location identification technology for this exact reason: mobile phones save lives.[7]

Moreover, wireless is critical to agriculture, tourism, and other industries characterized by use of large areas.[8] Denying carriers the ability to maintain and deploy coverage for rural areas denies those citizens the public safety that comes from mobile phone services that are available in urban areas, contrary to the principles set forth in the Act.

In 1996, Congress modified the universal service program, and after time for regulatory implementation in federal and state rules, wireless carriers could apply for funding for the first time ever. This application process can take years. In 1999, CETCs still received only $534,012 (total, nationwide) for the year in high cost funding. Over the years, though, wireless applications started getting granted, and where universal service funds are received, citizens are finally starting to receive the benefits of more coverage, including a wider area of public safety, increased business commerce, telemedicine, distance learning, and the many other beneficial applications of mobile data and voice communications services. So CETCs' *rate* of increased

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[7] See, e.g., Susan Kyle, *Wireless 9-1-1 Tracking a 'Godsend' for Rescuers, Patients* (December 21, 2005) at http://publicsafety.com/article/article.jsp?id=2649&siteSection=5; *Wireless Snapshots* (April 2005) http://www.emsresponder.com/print/Emergency--Medical-Services/Wireless-Snapshots/1$1856 ; John Deere Homestead Magazine: *Find Me Fast* (Fall 2005) at http://www.deere.com/en_US/ag/homestead /rural_living/2005/find_me_fast_fall05.html

[8] *See, e.g., Agriculture Groups Lend Support to Wireless Across America: Eight Organizations Join Coalition to Protect Wireless Access for Rural Customers, http://www.wirelessacrossamerica.org/site/press_release/ag_groups_release_06_06_07/* (rel. June 6, 2007) (noting, for example, that Larry Matlack, of the American Agriculture Movement, said his organization joined the coalition because of "its commitment to equality in service for all Americans, regardless of their geographic location.") As noted therein, National Grange President William Steel said:

> As the nation's oldest general farm and rural public interest organization, the National Grange and its affiliated 2,800 local Grange chapters across rural America are proud to join Wireless Across America. . . .The coalition has been working to give family farmers, rural small businesses, residents and visitors the same communications tools that are taken for granted in urban communities today. Grange members believe that universal access to reliable and competitive wireless telecommunications technologies must be available to all rural communities at affordable costs in the 21st Century.

funding looks high because not too long ago they received $0 per year. Yet the amount CETCs *receive* is still significantly less than landline companies.

We respectfully urge the Commission to make decisions in a transparent and rational manner that serves the public interest and favors "competition, not competitors."[9] The proposed CETC fund caps and GCI's self-serving proposed exemption would, if adopted, be hard to construe as fair and equitable process. As five esteemed Senators wrote to Joint Board Chairman Tate and Oregon PUC Chairman Baum, in a letter attached for your convenient reference:[10]

> Instead of limiting rural consumers' options, …[it makes more sense to] focus its efforts on even-handed interim and long term reform measures. It seems worthwhile to us … [to] seriously consider competitively-neutral proposals, ensure accountability for how funds are used, and promote build-out of advanced services in rural regions through effective targeting of funds to high cost areas. We believe that all of these proposals have been thoroughly investigated and could be adopted relatively quickly.

And as Commissioner McDowell recently stated: [11]

> This year the Commission has an historic opportunity to implement meaningful and lasting fiscal reform that balances stakeholders' concerns and promotes the interests of consumers. We should seize this opportunity and take a bold step forward.

To the extent government chooses to aid extension of technologies to the "last mile," all services should be placed on an equal footing without either artificially promoting or artificially impeding the choices of consumers or service providers, and all market participants should receive equal support per customer, based on the costs of building an efficient network in a particular area. The Commission has reached these conclusions repeatedly and they remain true today.

Universal service improvements should be consistent with the core principles of the 1996 Act: that all Americans deserve the benefits of competition, and support should work with competition, rather than hamper the success of a free market. Support should be distributed efficiently, freeing up funds for investments in broadband.

The current focus on new entrants is designed by our competitors only to distract attention from the true issues, the larger issues that, if remedied, would equitably and more substantially increase the efficiency of the USF high-cost program. For example, the Commission could remove the permanent waiver of portability of support that many ILECs have – *i.e.*, their funding levels do not change appreciably even when they lose customers. In contrast, CETCs lose

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[9] *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962); *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977); *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224 (1993).

[10] *See* Letter from Senators Rockefeller, Pryor, Dorgan, Klobucher and Smith, to Commissioner Tate and Oregon PUC Chairman Baum (March 21, 2007).

[11] Statement of Commissioner Robert M. McDowell, *High-Cost Universal Service Support*, WC Docket No. 05-337 and CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-05 (released Jan. 29, 2008).

support when they lose a customer. This is true even though a CETC must still support its costs of spectrum, switches, tower and base station equipment covering that customer's area, because other customers still use handsets and require signal, transport, and the many other costs of service.[12]

CETC-only funding caps, with or without special carve-outs, would not achieve the Commission's ability and Congress' expectation to fully achieve the goal of promoting universal service for rural consumers. It is crucial to level the playing field, which will improve prices, service quality and choice for consumers, rather than permitting cuts in funding only for newer market entrants.

II. <u>If Caps Are Adopted, They Should Apply Nationwide, Rise When Pending State Applications Are Granted, And Apply To All Recipients of High-Cost Funding.</u>

If, despite all the foregoing reasons, the funding caps are adopted rather than more comprehensive reforms, any such caps should at a minimum incorporate the following provisions:

(1) Because the purported goal is to limit funding growth across the country, not to penalize individual states nor to worsen "the current disproportionate distribution of … support among the states,"[13] <u>any caps should apply on a nationwide basis, rather than state by state</u>. Rural deployment tends to lag urban deployment by several years,[14] and as rural states are largely comprised of the very high-cost areas most

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12 *See Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking,* 16 FCC Rcd 11244, 11294-95 (2001) ("*RTF Order*") which implemented a five-year transition period during which rural ILECs were to prepare for competition and portability. This transition period was extended indefinitely in a May 2006 order in which the FCC declared the transitional rules would remain in place "until the Commission adopts new high-cost support rules for rural carriers." *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support,* 21 FCC Rcd 5514, 5515 (2006). In fact, the continuing extension of this transition period is a true and significant cause of fund growth. Wireline carriers are losing access lines at an accelerating pace, but interestingly, they continue to draw $3.15 billion per year in high cost support. In contrast, wireless carriers lose support attributed to a customer when they lose the customer. This is inequitable: like wireline carriers, wireless carriers' capital investments in a system serving high cost areas do not magically disappear simply because a customer moves to another provider. All carriers in the system should be subject to similar rules.

It is worth noting that as *wireless* consumers pour a greater proportion into the federal fund each month, the amount that consumers overall contribute to the fund has dropped in 2007 from 11.7% of interstate charges to 10.2%. *See* Proposed Second Quarter 2007 Universal Service Contribution Factor, Public Notice, DA-07-1330 (FCC, March 15, 2007) (announcing contribution factor of 11.7%); Proposed Third Quarter 2007 Universal Service Contribution Factor, Public Notice, DA-07-2639 (FCC, June 14, 2007) (announcing contribution factor of 11.3%); Proposed Fourth Quarter 2007 Universal Service Contribution Factor, Public Notice, DA-07-3928 (FCC, Sept. 13, 2007) (announcing contribution factor of 11.0%); Proposed First Quarter 2008 Universal Service Contribution Factor, Public Notice, DA-07-5007 (FCC, Dec. 14, 2007) (announcing contribution factor of 10.2%).

13 *Cap RD*, ¶ 5.

14 Most rural states have less populated areas that are still are in the nascent stages of wireless deployment, because wireless providers have only gained the ability to apply for high-cost funding during this decade. In light of the time period of implementation of the Act, as well as the one or more year process at state commissions of

appropriate for the purposes of the Fund, it would be capricious to deny those states the ability to grow their eligibility for buildout funding.

(2) Because the purported goal is to limit future funding growth, rather than roll back support already being used to support and maintain universal service to rural areas, the base period for any interim caps should be the most recent calendar quarter for which data are available – *e.g.*, the projected amounts for the 2nd quarter 2008, filed by USAC on Feb. 1, 2008.

(3) Because the caps under consideration would rise to accommodate applications for eligibility that are currently pending at the federal level, they should also rise to accommodate applications for eligibility currently pending at the state level. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations. Specifically, CETC applications still pending at state commissions on the base period date should, if granted by the applicable commission, be permitted to raise the level of the cap by the amount of funding that would ordinarily, absent caps, have been allocated for that application. This will ensure all applications for eligibility are accorded the same treatment, regardless of the fact, unrelated to the merit of an application, of whether a state PSC accepted jurisdiction over the application or whether it was instead sent to the FCC. Moreover, importantly, it will ensure that the statutorily required grant of a meritorious, legally compliant application at a state commission, in accordance with the Act, does not result in a decrease in funding to existing CETCs in that state (or nationwide, if our nationwide suggestion, *supra*, is adopted) in order to maintain the cap level.

(4) Because the purported goal is to limit funding growth, rather than confer special preferences or special harms on one technology vis-à-vis another, any caps should apply to all ETCs alike, including ILECs as well as CETCs. Such caps should have little, if any, impact on the ILECs, if the Joint Board's expectations are borne out in reality.[15] Attached for convenient reference is a letter from four Republican members of the Senate Commerce Committee to Joint Board Chairman Tate, making precisely this point ("We strongly request that the Board recommend an *overall* cap on the entire USF program. . . . We do not support any plan that would cap only one select group of providers but not others, as we believe such a fix would unfairly skew the marketplace.").

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considering eligibility applications, it is not surprising that although ILECs have been receiving funding for years, and in fact doubled their high-cost funding between 1999 and 2007, most wireless carriers have only recently started to receive funding to build high cost areas, although they still receive less than a third of the funding going to ILECs.

15 "[S]upport to incumbent LECs has been flat or even declined since 2003…. [T]he data show less growth pressure from incumbent LECs." *Cap RD*, ¶¶ 4, 5. Significantly, each of the items listed above was specifically mentioned or is a logical outgrowth of proposals in the *Cap RD* and the FCC's associated NPRM. *Cf.* RICA 02/19/08 ex parte at 2. By contrast, GCI's proposal was invented out of thin air in the ex parte process – it was not mentioned in the *Cap RD* or the NPRM, and parties never had a chance to file comments on it.

III. GCI's Proposed Exemption For Itself Would Neither Benefit Consumers Nor Advance Universal Service Reform.

We believe the Commission should comprehensively reform the high cost rules, rather than imposing technology-targeting caps or unique carve-outs. This would advance the principle that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another."[16]

Make no mistake: it is imperative to ensure predictable and sufficient universal service funding for rural communities in Alaska and elsewhere, including tribal lands and the many rural and remote communities in many states. We agree with the Alaska Federation of Natives: [17]

> Without access to the advanced telecommunications and information services (including mobile wireless and broadband) that less remote communities enjoy, these 200 rural Alaska communities will be denied the economic, educational, public health, and public safety benefits that Congress intended the Fund to provide to rural America.

Neither Alaska tribal consumers nor consumers across the country are served by continuing to ignore the "programmatic flaws" in the high cost program or "whether the program has sufficient accountability measures in place to protect the public interest."[18] CETCs make regular detailed showings, filed with federal and state regulators pursuant to 47 C.F.R. § 54.209 and corresponding state rules, that demonstrate precisely how they invest their high cost funds to benefit high cost communities.[19] By contrast, the ILECs are under no such obligation and therefore send a comfortable return on investment to investors (and rural cooperative members) with no accountability. A cap on CETC funding, with or without a GCI carve-out, does nothing to remedy this problem.

Regretfully, we observe that consideration of a so-called emergency, interim cap on only competitive carriers is indeed inflaming discord, rather than consensus, among industry sectors and the consumers they serve.[20] The recent exchange of ex parte filings between GCI and other carriers bears out this concern.[21] GCI's exemption would neither benefit consumers nor advance comprehensive universal service reform.

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16 *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997).

17 Alaska Federation of Natives 06/26/07 ex parte (emphasis added), cited in GCI 02/04/08 ex parte at 2.

18 *See* Letter from John D. Dingell, Chairman, House Committee on Energy and Commerce, to Kevin J. Martin, Chairman, FCC (April 12, 2007).

19 *Contra*, GCI 02/04/08 ex parte at 2.

20 *See* Dissenting Statement of Commissioner Michael J. Copps, to *High-Cost Universal Service Support*, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. on Univ. Serv./07) ("*Cap RD*").

21 *See* GCI 5/31/07, 11/2/07, 1/7/08, and 2/4/08 ex partes; ACS Wireless 11/14/07, 12/11/07, 1/3/08, and 2/4/08 ex partes; TelAlaska 2/19/08 ex parte; Alaska Tel. Ass'n 2/12/08 ex parte; Rural Independent Competitive Alliance 2/19/08 ex parte; Alltel 1/30/08 ex parte.

We urge the Commission not to adopt the proposed caps on funding, which advantage a single group of competitors. Instead, Chinook Wireless supports rapid and diligent reform of the entire underlying system, in order that the goals Congress enacted in 1996 may finally be realized By encouraging a level playing field and efficiencies in the use of funding, regulators can curb Fund growth while providing consumers with the benefits of universal service *and* competition.

Respectfully submitted,

Jonathan D. Foxman
President and CEO

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell

Julia K. Tanner, General Counsel, Chinook Wireless

Attachments

GCI's latest "carve out" proposal is clearly described such that GCI is the only entity that would qualify, although it claims the proposal would be neutral. See ACS 2/4/08 ex parte; TelAlaska 2/19/08 ex parte; Alaska Tel. Ass'n 2/12/08 ex parte; RICA 2/19/08 ex parte; Alltel 1/30/08 ex parte. GCI would have the Commission inflict cuts in support to rural wireless consumers in Alaska and across the country, while continuing the flow of dollars to GCI and ILECs. When GCI sought a carve-out from the Joint Board, the Joint Board stated:

> We decline to recommend that the Commission adopt General Communication Inc.'s (GCI) proposal that we exempt wireline competitive ETCs from the cap…. GCI would have us create an exemption based upon the ETC's chosen technology, rather than its legal status. We are not aware of anything in the Commission's current rules that provides a precedent for such a technology-based differentiation within universal service policy.

Cap RD, ¶ 7.

United States Senate

WASHINGTON, DC 20510

April 13, 2007

The Honorable Deborah Tate
Chairman
Federal-State Joint Board on Universal Service
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Joint Board Chairman Tate,

The Federal-State Joint Board on Universal Service (Board) was established, in part, to provide recommendations on how best to preserve and advance the federal Universal Service (USF) program. We are writing today to provide the Board with our views on the USF program, which we believe must be substantially reformed to if it is to continue, and to share our serious concerns over reports of recent and future increases in the contribution factor, which has pushed the entire program closer to a boiling point. The Board has the opportunity and, in our judgment, the obligation, to suggest reforms and structural changes to the USF program that could result in long-term solvency, and ensure that only consumers who truly need the program's support receive it. Failure of the Board to make the difficult decisions necessary at this critical juncture will reduce political support and sustainability of the program. We urge the Board to make the tough decisions and proposals necessary to place the program on a new course. In other words, it is time to be bold.

We strongly request that the Board recommend an *overall* cap on the entire USF program. Last year, the four of us and others supported an amendment to a telecommunications reform bill during consideration in the Senate Commerce Committee that would have capped the overall USF program. We believe a cap would ensure that the administrators of the USF program spend the money more effectively and efficiently, and would work to reduce this limitless and reoccurring tax on consumers.

We do not support any plan that would cap only one select group of providers but not others, as we believe such a fix would unfairly skew the marketplace. Instead, we reiterate the need for capping the overall program and doing so in a manner that does not pick winners and losers or favor one technology over another. We also urge you not to use interim measures, such as a temporary cap, to address the pressing issues facing the USF program. Many interim measures enacted by the Federal Communications Commission in the past have lived far longer than intended when proposed.

While a cap on *all* USF program funding is truly needed, a cap is only as valuable as the corresponding changes made to the USF distribution mechanism. Funding multiple providers without a reduction in the level of support for existing providers losing customers has put the fund on an uncontrollable growth pattern that will only result in higher telephone bills for all Americans. If this is not addressed, the USF program will over subsidize some markets at the expense of those markets most in need.

In addition, we strongly recommend the Board give significant weight to a reverse auction mechanism for distributing USF support. This can be done in a number of ways, including establishing the support level for a study area, state, or otherwise (i.e., maximum price support point), or establishing a *sole* provider eligible for support in a respective market. However accomplished, allowing all providers to take part of one unified auction in a market -- not just a platform-specific proposal -- to bid down support needed to serve particular consumers will reduce the total cost of the USF high cost program. It will also bring much needed efficiency to the system, facilitate regulatory parity, allow for the emergence of new technologies to many markets, eliminate the distinction between rural and non-rural incumbent carriers, and instill necessary market-oriented solutions.

In sum, the USF program has not kept pace with the remarkable innovation that has occurred in the communications industry over the last few years. It must be dramatically reformed to operate in a way that best serves the American people. The Board must transform this program into one that takes in and distributes USF funds in a responsible manner that ensures Americans are not subjected to limitless increases on their phone bills. We respectfully request that you take the steps necessary to fully reform the USF program and reject short-term solvency solutions.

We ask that this letter be handled in strict accordance with existing agency rules, regulations, and ethical guidelines.

Sincerely,

John E. Sununu   John McCain

Jim DeMint   John Ensign

JOHN D. ROCKEFELLER IV
WEST VIRGINIA

United States Senate
WASHINGTON, DC 20510–4802

March 21, 2007

The Honorable Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Chairman Ray Baum
Oregon Public Utility Commission
550 Capitol Street, N.E., Suite 215
Salem, Oregon 97308-2148a

Commissioners Tate and Baum:

As you are aware, the Senate Commerce Committee recently held a hearing on the future of the Universal Service Fund (USF). At the hearing, several of the witnesses proposed a cap for the USF high cost fund in order to limit the increasing burden to consumers from an increasing USF assessment. These witnesses believed a cap was necessary because the Federal-State Joint Board (Joint Board) and the Federal Communications Commission (FCC) would not adopt any serious reforms of the program without a cap. We reject that notion.

As discussed at the hearing, the Joint Board and the FCC have a range of options to address the growth in the USF. It is our understanding that the Joint Board will soon be recommending to the FCC the imposition of an emergency cap on the program. We urge you to consider other more thoughtful measures to limit the growth of the USF instead of arbitrarily capping the fund. Rather than looking at how to make the program work more effectively and efficiently, the Joint Board and the FCC appear to be taking a step that may not achieve the goal of strengthening the program for the long-term.

Instead of limiting rural consumers' options, the Joint Board should focus its efforts on even-handed interim and long term reform measures. It seems worthwhile to us that the Board should seriously consider competitively-neutral proposals, ensure accountability for how funds are used, and promote build-out of advanced services in rural regions through effective targeting of funds to high cost areas. We believe that all of these proposals have been thoroughly investigated and could be adopted relatively quickly.

We also believe that a cap, especially one imposed only on certain carriers, would not provide incentives to all stakeholders to engage in thoughtful negotiations on how to best reform the USF. Although the cap is reported only to be a temporary cap, we are concerned that it would become a de facto permanent cap. Unless all recipients have an incentive to find solutions to controlling the growth of the USF, we do not believe that the Joint Board or the FCC would ever be able to adopt measures to reform and modernize the administration of the USF.

As co-Chairs of the Joint Board, you have very difficult choices ahead of you in stabilizing the growth of the USF and developing new policies to make sure the fund can meet the needs of rural America.

Sincerely,

Jay Rockefeller

Mark Pryor

Byron L. Dorgan

Amy Klobuchar

Cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Lisa Polak Edgar
Commissioner Larry S. Landis
Commissioner John D. Burke
Billy Jack Gregg